IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 05.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.3 of 2006

Fathima ... Petitioner

vs.

1. State of Tamilnadu
rep. by Secretary to Govt,
Public (SC) Department,
Fort St. George, Chennai-9.

2. Union of India, rep.
by Secretary to Govt.,
Ministry of Finance, Department
of Revenue, COFEPOSA Unit,
Central Economic Intelligence
Bureau, Janpath Bhavan,
'B' Wing, VI Floor, Janpath,
New Delhi 110 001. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records of the 1st respondent made in SR.1/1030-5/2005, dated 13.12.2005, quash the same, direct the respondent to produce detenu Ameer Sulthan, son of Naina Mohamed, now detained in central Prison, Chennai, under the Provision of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act and set him at liberty.

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For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.R.Loganathan.

For R-1 : Mr.M.Babu Muthu Meeran,
Addl. Government Pleader.

For R-2 : Mr.P.Kumaresan, Addl. Central
Govt. Standing Counsel.

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O R D E R

P.SATHASIVAM, J.

The petitioner herein challenges the impugned order of detention, dated 13.12.2005, detaining her husband by name Ameer Sulthan under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Heard Mr.B.Kumar, learned Senior Counsel for the petitioner; Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for R-1; and Mr.P.Kumaresan, learned Additional Central Government Standing Counsel for R-2.

3. Mr.B.Kumar, learned Senior Counsel for the petitioner, after taking us through the grounds of detention, materials supplied to the detenu and all other connected papers, has raised the following contentions,

a. The seizure mahazar states that the price of the goods was arrived at with the assistance of Customs Officers. The detenu, in his representation to the respondents, sought to apprise him of the basis on which valuation was arrived at in respect of the goods, ie., watches, seized from him. On 09.01.2006, the Government replied to the representation stating that the valuation had been made as per the general guidelines. According to the learned Senior Counsel, the reply of the Government is improper and irrelevant inasmuch as the mahazar proceeds on the basis that the value of the watches was made with the assistance of the Customs Officers and they cannot change the basis of calculation of the value; and the counter also says that the value was made only with the assistance of the Customs Officers; hence, it leads to a presumption that the Government has been misguided and consideration of the representation has become invalid.

b. The guidelines have not been adopted on the face of it since plastic watches are to be valued only at Rs.60, whereas the calculation has been made at Rs.100/- per piece. Likewise, cheap quality of metal watches are to be valued at Rs.75/- per piece, whereas, valuation was made at Rs.100/- per piece in the mahazar. Thus, the document itself shows total non-application of mind.

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c. In the representation dated 26.12.2005, the petitioner has referred to several details including the fact that the watches seized have no commercial value and they would be sold only at the rate of Rs.25/- to 30/- per piece. In the same representation, the petitioner has pointed out that the DRI Officials ought to have fixed the value of the seized watches as in the case of one Mohammed Asghar Khan, who is a co-passenger and who also brought similar watches from Hong Kong. In spite of the specific claim that the valuation in respect of the watches seized from the detenu is inflated and the calculation was made not in accordance with the guidelines by resorting to the methodology adopted in respect of others, the first respondent, without considering the same, sent a stock reply that the valuation was made as per the guidelines. Hence, the consideration of the representation is vitiated.

4. Learned Additional Public Prosecutor, by placing relevant records, contended that there is no procedural flaw or error in the order of detention; and prayed for dismissal of the petition.

5. We have considered the rival contentions and perused the relevant records.

6. It is seen from the particulars that on 18.11.2005, the detenu came from Hong Kong. He resorted to red channel and declared the goods brought by him as watches valued at Rs.30,000/-. The goods were inventoried and the value of the same was arrived at Rs.5,42,250/-. They were seized on the ground that they were in trade quantities and that misdeclaration has been made in respect of their value. A statement was recorded and on the same day, ie., on 18.11.2005, he was arrested and remanded to custody on 19.11.2005. On 13.12.2005, detention order was passed against the detenu to prevent him from indulging in smuggling goods.

7. In the seizure mahazar, regarding value, it has been stated that the price of the seized goods was arrived at by the Officers with the help of Customs Officers. It is further stated that the total value of the goods was arrived at Rs.5,42,250/- as against the declared total value of Rs.30,000/-. As rightly pointed out, in the counter, it is stated that the value was made only with the assistance of the Customs Officers, however, while replying to the representation, the Government came forward with a statement that the valuation was arrived in respect of the seized watches as per the guidelines. Though in the mahazar and in the counter, it is stated that value of the goods was arrived at with the assistance of the Customs Officers, it is the stand of the Government that the value was arrived at as per guidelines.

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8. Mr.B.Kumar, by pointing out the details mentioned in the mahazar, dated 18.11.2005, submitted that the Officers have not adopted the value as shown in the guidelines and fixed the same according to their whims and fancies. He also pointed out that the valuation differs from person to person although they all stand on the same footing. Referring to the guidelines, he mentioned that plastic watches are to be valued only at Rs.60, whereas, the calculation had been made at Rs.100/- per piece. Likewise, he also mentioned that cheap quality of metal watches are to be valued at Rs.75/- per piece, whereas, value has been made at Rs.100/- per piece in the mahazar. As rightly pointed out, except stating that the valuation was arrived at based on the guidelines, there is no information either in the reply or in the counter affidavit regarding the discrepancies pointed out.

9. In the representation dated 26.12.2005, after stating that watches similar to that of the seized ones are being sold in Ratan Bazaar and N.S.C. Bose Road even at the rate of Rs.25/- to 30/- per piece, it is pointed out that in the case of one Mohammed Asghar Khan, the DRI Officers fixed a reasonable value and failed to adopt the same in the case of the detenu. At the end of the said representation, the petitioner has specifically mentioned,

> "... டி.ஆர்.ஐ. அதிகாரிகள் முஉறம்மது அஸ்கர்கான் என்பவருக்கு நிர்ணயிக்கப்பட்ட விலையைத்தான் என்னுடைய கணவர் கொண்டு வந்த பொருட்களுக்கும் நிர்ணயம் செய்திருக்க வேண்டும். மேற்சொன்ன முஉறம்மது அஸ்கர்கானுக்கு ரூபாய் 35 க்கு குறைவாகத்தான் நிர்ணயம் செய்யப்பட்டு அவர் சுங்கத்தீர்வையும் கட்டியிருக்கிறார். அப்படி இருக்கும்போது என் கணவர் கொண்டு வந்த வாட்சுகளின் மதிப்பை மட்டும் எவ்வாறு அதிகமாக மதிப்பீடு செய்யப்பட்டது என்ற விளக்கம் என் கணவருக்கு அளிக்குமாறு கேட்டுக் கொள்கிறேன் ..."

For this, the first respondent sent a reply on 17.01.2006 stating that the value has been arrived at for the seized watches as per the guidelines of the Customs Department. As rightly pointed out, it is apparent that this is only a bald statement made by the authority without considering the specific details furnished in the representation.

10. In this regard, Mr.B.Kumar, learned Senior Counsel contended that Courts have taken a view that the Government cannot reject the representation of a detenu in a casual or mechanical manner. He also contended that the Government is expected to dispose of the representation with an unbiased mind. It will be useful to refer the dictum laid down by the Hon'ble Supreme Court in various decisions as to how a representation has to be considered and disposed of,

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A. In the case of John Martin vs. State of West Bengal reported in AIR 1975 S.C. 775, a Three Judge Bench of the Hon'ble Supreme Court, while considering the representation of the detenu, has concluded,

> "3. ..... This, however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner. The appropriate Government must bring to bear on the consideration of the representation an unbiased mind. There should be, as pointed out by the Court in Haradhan Saha's case, "a real and proper consideration" of the representation by the appropriate Government. We cannot over-emphasis the need for the closest and most zealous scrutiny of the representation for the purpose of deciding whether the detention of the petitioner is justified. "

B. The law laid down in John Martin's case was subsequently followed in the case of A.C. Razia vs. Government of Kerala reported in 2004 SCC (Crl.) 618, which is also a Three Judge Bench decision. While considering the power of the Central Government in considering the representation made by the detenu, Their Lordships have concluded,

> "22. ..... The exercise of the power under Section 11 should not be a mere formality or a farce. Care and vigilance should inform the action of the Government while discharging its supervisory responsibility. As observed in Haradhan Saha case (1974 SCC (Crl.)816) and reiterated in K.M. Abdulla Kunhi case (1991 SCC (Crl.)613, what is required is "real and proper consideration". The following observation in Abdul Karim (1969 (1) SCC 433) are quite opposite in this context.
>
> > "But it is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article

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> 22 (5) is a valuable constitutional right and is not a mere formality."
>
> 23. The same proposition has been highlighted by Rajendra Babu, J. By observing that "there should be full and independent application of mind. "

Even in the dissent judgment, Hon'ble Mr. Justice S.B. Sinha, has accepted the above proposition and concluded,

> "50. It is therefore, trite that all facts which are relevant for the purpose of giving relief to the detenu are required to be considered. In that view of the matter, the quality of an order passed by the Central government in terms of Section 11(1)(b) of the Act cannot be different from that of the authority which had passed the order."

11. The above decisions make it clear that considering the representation of detenu is not a mere formality, but the same has to be disposed of with an unbiased mind and closest and most zealous scrutiny for the purpose of deciding whether the detention is justified or not.

12. It is also useful to refer to the decision rendered by a Division Bench of this Court (to which one of us was a party (P.SATHASIVAM, J.), reported in 2006 (I) MLJ (Cri) 131 (Mohiadeen Sahib, P.M.S. vs. State of Tamil Nadu). In the said decision, while considering disposal of the representation of the detenu, after referring to all the above referred decisions, it was concluded that the representation of the detenu is not a mere formality and the same has to be considered with an unbiased mind. It was also held that when several particulars are furnished, it is but proper on the part of the Government to verify those details from the officers concerned and an order has to be passed after due consideration.

13. In respect of similar contention and with reference to the goods seized on the same day, while accepting identical point, this Court quashed the detention order in HCP No.4 of 2006 dated 28.06.2006. The said decision is directly applicable to the case on hand.

14. We have already referred to the fact that the petitioner herein, in her representation dated 26.12.2005, specifically referred to the valuation fixed in respect of the watches brought by a co-

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passenger of the detenu viz., Mohammed Asghar Khan; and that there is no specific detail available in the reply, dated 17.01.2006, of the second respondent, divulging the basis on which valuation was made at Rs.35/- per watch. Likewise, in the affidavit filed in support of the above petition, the petitioner has specifically stated that the Customs Authorities have diligently considered the issue of valuation of such watches as was brought by the detenu in the case of Mohammed Asghar Khan and fixed the value less than Rs.33/- per watch and also collected the duty thereon. It is also stated that if in respect of contemporaneous import of similar goods, valuation is made by the Customs Authorities at less than Rs.33/- per piece; then, a different yardstick cannot be adopted for the detenu. For the above specific allegation, there is no proper discussion or explanation in the counter affidavit. Learned Senior Counsel has also placed a xerox copy of the baggage receipt & assessment made by the D.R.I. Officers in the case of Mohammed Asghar Khan. As rightly pointed out, this singular aspect of valuation applied to a co-passenger by name Mohammed Asghar khan shows that the methodology adopted by the DRI Officers in respect of the detenu is totally unacceptable and it leads to a presumption that the same was done with a view to arrest and detain the detenu.

15. Though learned Additional Public Prosecutor has submitted that valuation of the goods seized is immaterial for the purpose of passing the detention order, as pointed out earlier and also not in dispute, no arrest ought to be made under the Customs Act on the ground of suspected evasion of customs duty unless value of the goods in respect of which the evasion of duty is suspected exceeds Rs.5,00,000/-. In such circumstances, proper valuation by the authority concerned is paramount, as otherwise, the detenu would be handicapped in giving proper reply in respect of excessive valuation. Learned Additional Public Prosecutor also relied on the Division Bench decision, dated 06.04.2006, in HCP No.1174 of 2005. He very much emphasised that, as per para 15 therein, the valuation cannot be questioned in this Petition. We perused the entire judgment. We have no quarrel with the proposition stated therein. But, in the case on hand, we find that the relevant details though specifically stated, the same were not considered while disposing of the representation. Only on the ground of improper disposal of representation, we are inclined to interfere.

16. In the absence of any explanation by the respondents in respect of valuation of similar watches brought by Mohammed Asghar Khan, fixing the value at Rs.33/- per watch, the contention of the petitioner cannot be rejected as unacceptable, on other other hand, we are of the view that there is force in the said contention. On this ground also, the impugned order is liable to be quashed.

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17. In these circumstances, we are satisfied that the petitioner has made out a case and that the impugned order of detention cannot stand, accordingly, the same is quashed. Consequently, the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to Govt., Public (SC) Department,
Fort St. George, Chennai-9.

2.The Secretary to Govt., Ministry of Finance, Department of Revenue, COFEPOSA Unit, Central Economic Intelligence Bureau, Janpath Bhavan,
'B' Wing, VI Floor, Janpath, New Delhi 110 001.

3.The Superintendent, Central Prison, Chennai-3.

4.The Public Prosecutor, High Court, Madras.

5.The Joint Secretary to Government, Public (Law and Order)
Fort St.George, Chennai-9.

6.The Sub Asst. Registrar, COFEPOSA Section, Administrative Department, High Court, Madras.

+ one cc to Mr.R.Loganathan, Advocate Sr.No.28621.

TEJ (CO)
RSM/11.7.2006

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